

## **AO DRAFT COMMENT PROCEDURES**

The Commission permits the submission of written public comments on draft advisory opinions when on the agenda for a Commission meeting.

DRAFT ADVISORY OPINION 2009-18 is available for public comments under this procedure. It was requested by Carol A. Laham, Esq., and D. Mark Renaud, Esq., on behalf of Penske Truck Leasing Co., L.P., Penske Truck Leasing Corporation, and Penske Truck Leasing Co., L.P. Political Action Committee.

Draft Advisory Opinion 2009-18 is scheduled to be on the Commission's agenda for its public meeting of Tuesday, July 28, 2009.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00pm noon (Eastern Time) on July 27, 2009.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

**CONTACTS**

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Other inquiries:

To obtain copies of documents related to AO 2009-18, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at [www.fec.gov](http://www.fec.gov).

For questions about comment submission procedures, contact Amy L. Rothstein, Assistant General Counsel, at (202) 694-1650.

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**AGENDA ITEM**  
For Meeting of: 07-28-09

**SUBMITTED LATE**

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*  
General Counsel

Amy L. Rothstein *AR*  
Assistant General Counsel

Christine C. Gallagher *CG*  
Attorney

Subject: Draft AO 2009-18 (Penske Truck Leasing Co., L.P.)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for July 28, 2009.

Attachment

1 ADVISORY OPINION 2009-18

2  
3 Carol A. Laham, Esq.  
4 D. Mark Renaud, Esq.  
5 Wiley Rein LLP  
6 1776 K Street, NW  
7 Washington, DC 20006

DRAFT

8  
9 Dear Ms. Laham and Mr. Renaud:

10 We are responding to your advisory opinion request on behalf of Penske Truck  
11 Leasing Co., L.P. (“Joint Venture”), its general partner Penske Truck Leasing  
12 Corporation (“Penske”), and the Joint Venture’s separate segregated fund (“SSF”) Penske  
13 Truck Leasing Co., L.P. Political Action Committee (“Penske PAC”). The request  
14 concerns the application of the Federal Election Campaign Act of 1971, as amended (the  
15 “Act”), and Commission regulations to the possible disaffiliation of the Penske PAC and  
16 the SSF of the General Electric Company (“GE”), the General Electric Company PAC  
17 (“GEPAC”).

18 The Commission concludes that Penske PAC and GEPAC remain affiliated  
19 because the Joint Venture and the GE limited partners remain affiliated.

20 ***Background***

21 The facts presented in this advisory opinion are based on your letter and  
22 attachments received on June 17, 2009, and an e-mail received on July 2, 2009.

23 ***a. The Joint Venture***

24 The Joint Venture is a partnership organized under Delaware partnership law.  
25 The business of the partnership is the renting, leasing, and servicing of tractors, trailers,  
26 and trucks to third party users and acting as a contract and common motor carrier.

1           In 1988, Penske formed a limited partnership in which affiliates of General  
2 Electric Capital Corporation (“GE Capital Corporation”) became limited partners one  
3 month later. Although GE Capital Corporation affiliates became involved shortly after  
4 the formation of the Joint Venture, they were not involved in the Joint Venture’s actual  
5 creation.<sup>1</sup>

6           In 1988, affiliates of Penske owned 69% of the Joint Venture and affiliates of GE  
7 Capital Corporation owned 31%. In 2002, GE affiliates owned 79% of the Joint Venture.  
8 Since then, the ownership level of the GE affiliates steadily decreased, though remaining  
9 above 50%, until the execution of the Joint Venture’s Third Amended and Restated  
10 Agreement of Limited Partnership of Penske Truck Leasing Co., L.P. (“Third Restated  
11 Agreement”) on March 26, 2009.

12           Currently, Penske, an indirect and wholly owned subsidiary of Penske  
13 Corporation, serves as the sole general partner. Of the current eight limited partners, four  
14 are GE companies<sup>2</sup> and four are Penske companies.<sup>3</sup>

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<sup>1</sup> In 1982, Penske entered into a joint partnership with Hertz Truck Division. In 1988, Penske purchased Hertz’s remaining share of the joint venture and formed a partnership with General Electric. *See* <http://www.gopenske.com/penske/history.html> (last visited July 9, 2009).

<sup>2</sup> The GE companies, and their respective limited partner ownership interest in the Joint Venture, are: General Electric Credit Corporation of Tennessee (“GE Tennessee”), a Tennessee corporation – .50%; and RTLC Acquisition Corp. (“RTLC-AC”) – 35.36%, Logistics Holding Corp. (“Holdco”) – 12.09%, and NTFC Capital Corporation (“NTFC”) – 1.95%, all Delaware corporations. Each of these companies is an affiliate of GE Capital Corporation.

<sup>3</sup> The Penske companies, and their respective limited partners are: PTLC Holdings Co., LLC (“PTLC-LLC”) – 18.36%, PTLC2 Holdings Co. LLC (“PTLC2-LLC”) – 10.02%, PTLC3 Holdings Co., LLC (“PTLC3-LLC”) – 1.00%, each is a limited liability company organized under the laws of Delaware; and Penske Automotive Group, Inc. – 9.02%, a Delaware corporation.

1           ***b. The Third Restated Agreement***

2           Following the execution of the Third Restated Agreement, the GE companies'  
3 ownership level of the Joint Venture fell to 49.90%, and they became majority limited  
4 partners. Currently, Penske, the only general partner, owns 11.70% of the Joint Venture,  
5 and the combined ownership of the Penske general partner and the Penske limited  
6 partners is 50.10%. Third Restated Agreement at Schedule A.

7                   ***1. General Operations of the Joint Venture***

8           Under the Third Restated Agreement, Penske, as the general partner, has broad  
9 management control of the affairs of the Joint Venture. The “[g]eneral [p]artner shall  
10 perform or cause to be performed all management and operational functions relating to  
11 the business of the” Joint Venture. Third Restated Agreement at Article 6.3(b).  
12 Moreover, the limited partners “shall not participate in the control of the business of the  
13 [Joint Venture] and shall have no power to act for or bind the [Joint Venture].” *Id.* at  
14 Article 6.1(a). The limited partners do, however, have the right to approve certain actions  
15 proposed to be taken by the general partner, and certain voting rights, as describe more  
16 fully in the analysis below.

17                   ***2. The Advisory Committee***

18           Rather than a board of directors, the Joint Venture has an Advisory Committee  
19 consisting of five members, three appointed by the general partner, Penske, and two  
20 appointed by the GE companies.<sup>4</sup> *Id.* at Article 6.4(a). According to the Third Restated

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<sup>4</sup> In addition, Penske Automotive Group, Inc., a limited partner in the Joint Venture, has the right to have a non-voting observer on the Advisory Committee, which is entitled to receive all materials and information distributed to members of the Advisory Committee in connection with its meetings, and access to the Joint Venture’s management and records as if the non-voting observer were a member of the Advisory Committee. Third Restated Agreement at Article 6.4(a).

1 Agreement: “the Advisory Committee shall not be deemed to possess and shall not  
2 exercise any power that, if possessed or exercised by a [l]imited [p]artner would  
3 constitute participation in the control of the business.” *Id.* at Article 6.4(h).

4 According to the requestors, GE members of the Advisory Committee often use  
5 GE resources to fulfill their limited duties on the Advisory Committee. The Penske  
6 members use Penske resources to fulfill their duties.

7 *3. Financing the Joint Venture*

8 Before the execution of the Third Restated Agreement, the Joint Venture received  
9 financing from GE Capital Corporation at interest rates and other terms and conditions  
10 the same as or no less favorable than those provided to wholly owned subsidiaries of GE  
11 Capital Corporation. This credit line continues to be the Joint Venture’s primary source  
12 of funding. Various Penske companies also have arm’s-length commercial dealings with  
13 GE companies.

14 *c. The Penske PAC*

15 In 2002, the Joint Venture’s separate segregated fund, Penske PAC, was formed.  
16 Since 2002, Penske PAC has identified GE Credit Corporation of Tennessee as a  
17 connected organization on its FEC Form 1, due to the ownership level of the GE  
18 companies to the Joint Venture, and has identified GEPAC as an affiliated committee.<sup>5</sup>

19 Additional factual information is provided in the legal analysis that follows.

20 ***Question Presented***

21 *Are Penske PAC and GEPAC disaffiliated?*

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<sup>5</sup> GEPAC is the General Electric Company’s SSF, and GE Capital Corporation is the General Electric Company’s financing unit. See [http://gecommercialfinance.gecapsol.com/cms/servlet/cmsview/ComFin\\_Corp/prod/en/main/index.html](http://gecommercialfinance.gecapsol.com/cms/servlet/cmsview/ComFin_Corp/prod/en/main/index.html) (last visited July 9, 2009).

1 ***Legal Analysis and Conclusions***

2 No, Penske PAC remains affiliated with GEPAC, given that the Joint Venture's  
3 primary source of funding remains a credit line provided by GE Capital Corporation, an  
4 affiliate of the GE limited partners, at rates no less favorable than would be provided to a  
5 wholly owned subsidiary of the GE Capital Corporation.

6 ***a. Applicable Law***

7 The Act and Commission regulations provide that political committees, including  
8 SSFs, that are established, financed, maintained, or controlled by the same corporation,  
9 labor organization, person, or group of persons, including any parent, subsidiary, branch,  
10 division, department, or local unit thereof, are affiliated. *See* 11 CFR 100.5(g)(2) and  
11 110.3(a)(1)(ii). Contributions made to or by such political committees are considered to  
12 have been made to or by a single political committee. 2 U.S.C. 441a(a)(5); 11 CFR  
13 100.5(g)(2) and 110.3(a)(1).

14 ***b. Per Se Affiliation***

15 Commission regulations identify organizations that are *per se* affiliated, and  
16 hence whose SSFs are *per se* affiliated. These organizations include a single corporation  
17 and/or its subsidiaries, and the same person or group of persons. *See* 11 CFR  
18 100.5(g)(3)(i) and (v); 110.3(a)(2)(i) and (v). The Joint Venture is not a subsidiary of GE  
19 because it is not majority-owned by GE or by any GE companies. Moreover, the Penske  
20 partners in the Joint Venture are separate from, and not a subsidiary, branch, division,  
21 department, or local unit of GE or any GE companies. Nor do the Joint Venture and the  
22 GE companies come within any of the remaining categories of organizations identified as

1 *per se* affiliated in Commission regulations. See 11 CFR 100.5(g)(1)-(3) and 110.3(a)(1)-  
2 (2). Accordingly, the Joint Venture is not *per se* affiliated with the GE companies.

3 *c. Affiliation Factors*

4 In the absence of *per se* affiliation, Commission regulations provide for an  
5 examination of various factors in the context of the overall relationship to determine  
6 whether one sponsoring organization has established, financed, maintained, or controlled  
7 the other sponsoring organization or committee, and hence, whether their respective SSFs  
8 are affiliated. See 11 CFR 100.5(g)(4)(i)-(ii) and 110.3(a)(3)(i)-(ii); Advisory Opinion  
9 2007-13 (United American Nurses). These ten circumstantial factors, each of which is  
10 discussed below, do not constitute an exhaustive list and other factors may be considered.  
11 See 11 CFR 100.5(g)(4)(ii) and 110.3(a)(3)(ii); Advisory Opinion 2004-41 (CUNA  
12 Mutual).

13 Importantly, these ten factors are not of equal weight. Those that go to underlying  
14 statutory considerations regarding the financing or control of one sponsoring organization  
15 by another are particularly significant. See 2 U.S.C. 441a(a)(5).

16 (A) *Whether one sponsoring organization owns a controlling interest in the*  
17 *voting stock or security of another sponsoring organization. 11 CFR*  
18 *100.5(g)(4)(ii)(A) and 110.3(a)(3)(ii)(A).*

19 According to the Third Restated Agreement, the GE companies own a 49.90%  
20 interest in the Joint Venture, down from 79% in 2002. Therefore, the GE companies are  
21 the holder of a minority interest that is also a limited partnership interest in the Joint  
22 Venture. No GE company owns any voting interest in Penske Corporation or any Penske

1 affiliate.<sup>6</sup> Under the facts presented, the GE companies no longer have a controlling  
2 interest in the Joint Venture. Thus, this factor does not suggest that the entities are  
3 affiliated.

4 *(B) Whether a sponsoring organization or committee has the authority or*  
5 *ability to direct or participate in the governance of another sponsoring*  
6 *organization or committee through provisions of constitutions, bylaws,*  
7 *contracts or other rules, or through formal or informal practices or*  
8 *procedures. 11 CFR 100.5(g)(4)(ii)(B) and 110.3(a)(3)(ii)(B).*

9 The general partner, Penske, has broad management control of the affairs of the  
10 Joint Venture. Without need for approval from the limited partners, Penske is charged  
11 with: expending capital and revenues of the Joint Venture in furtherance of the Joint  
12 Ventures' business; paying expenses, debts, and obligations of the Joint Venture; making  
13 investments; entering into and terminating contracts with third parties; maintaining  
14 adequate records and accounts; purchasing insurance and bonds; employing and  
15 terminating consultants, accountants, attorneys, and "others" for the Joint Venture; and  
16 incurring indebtedness by the Joint Venture. Third Restated Agreement at Article  
17 6.3(b)(i)-(viii). In addition, a simple majority vote of the Advisory Committee is needed  
18 to approve most of the activities relating to the Joint Venture, including: adopting an  
19 annual budget, changing the Joint Venture's policies related to credit approval levels;  
20 approving officers of the Joint Venture; and commencing actions and claims by the Joint  
21 Venture. *Id.* at Article 6.5(b)(ii), (vii), (viii), and (xiii). With the Penske general partner

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<sup>6</sup> Penske Transportation Holding Corporation, a subsidiary of Penske Corporation, owns 100% of the issued and outstanding voting common shares of Penske.

1 appointing three of the five members on the Advisory Committee, Penske companies  
2 have effective control of these decisions.

3           However, the Third Restated Agreement contains certain provisions intended to  
4 protect the GE limited partners' investments in the Joint Venture. Under these  
5 provisions, a supermajority of four members of the Advisory Committee is needed to  
6 approve certain decisions, such as incurring non-vehicle business debt in excess of \$50  
7 million; changing business conduct policies, name, or accounting policies or methods;  
8 making acquisitions in excess of \$10 million; changing the character of the Joint  
9 Venture's business from what it did on March 26, 2009; declaring distributions other than  
10 annual distributions; increasing or amending compensation arrangements for "direct  
11 services" of Roger Penske between the partnership and Mr. Penske or any of his  
12 affiliates; and changing auditors. *Id.* at Article 6.5(b)(i), (iii)-(vi), (ix)-(xii). In addition,  
13 the general partner may not amend the Third Restated Agreement without written  
14 approval from the GE limited partners. *Id.* at Articles 6.5(a)(v) and 2.47. Last, any  
15 determination to make a public offering of interests in the Joint Venture requires the  
16 unanimous written approval of all partners. *Id.* at Article 6.5(c).

17           In joint venture situations, the Commission bases its affiliation conclusions on the  
18 relationships between the sponsoring organizations and the control and influence exerted  
19 by the owner entities on the joint venture. *See* Advisory Opinions 2001-18 (BellSouth)  
20 and 1994-11 (FMC). In this situation, the GE companies do not control the day-to-day  
21 operations of the Joint Venture. The general partner has "full and complete charge of all  
22 affairs of the [Joint Venture], and the management and control of the [Joint Venture's]  
23 business shall rest exclusively with the [g]eneral [p]artner." Third Restated Agreement at

1 Article 6.3(a) and (b)(i)-(viii). Moreover, the general partner has a “fiduciary  
2 responsibility for the safekeeping and use of all funds and assets (including records)” of  
3 the Joint Venture and “shall not employ, or permit another to employ, such fund or assets  
4 in any manner except for the exclusive benefit of the [Joint Venture].” *Id.* at Article 6.2.

5 While a majority of four members of the Advisory Committee is needed to  
6 approve certain decisions, including incurring non-vehicle business debt in excess of \$50  
7 million and changing business conduct policies, the Commission has, in the past,  
8 concluded that limited partners in a joint venture were not affiliated with the joint  
9 venture, despite the existence of supermajority voting rights. *See, e.g.,* Advisory Opinion  
10 2001-07 (Nuclear Management Company PAC) (disaffiliation even though a  
11 supermajority vote of all members is required to issue new interests in the joint venture,  
12 amend the operating agreement in connection with issuing new interests, elect directors  
13 other than company representatives, and amend articles of organization). Thus, this  
14 factor does not suggest that the entities are affiliated.

15 (C) *Whether a sponsoring organization or committee has the authority or*  
16 *ability to hire, appoint, demote or otherwise control the officers or other*  
17 *decisionmaking employees of another sponsoring organization or*  
18 *committee. 11 CFR 100.5(g)(4)(ii)(C) and 110.3(a)(3)(ii)(C).*

19 As mentioned above, the GE companies appoint two members to the Joint  
20 Venture’s Advisory Committee. The general partner has the authority to appoint officers  
21 of the Joint Venture with the approval of three members of the Advisory Committee.  
22 Third Restated Agreement at Article 6.5(b)(viii). Therefore, the GE companies do not  
23 have the ability veto the appointment of officers. Except for the fact that the approval of

1 four members of the Advisory Committee is required to increase or amend the  
2 compensation arrangements for Mr. Penske's services to the Joint Venture, the GE  
3 companies do not have the authority or ability to hire, appoint, demote, or otherwise  
4 control the officers or other decisionmaking employees of the Joint Venture. *Id.* at  
5 Article 6.5(b)(xii). Nor do the GE companies have the authority or ability to hire,  
6 appoint, demote, or otherwise control the officers or decisionmakers of Penske PAC.  
7 Thus, this factor does not suggest that the entities are affiliated.

8 *(D) Whether a sponsoring organization or committee has common or*  
9 *overlapping membership with another sponsoring organization or*  
10 *committee which indicates a formal or ongoing relationship between the*  
11 *sponsoring organizations or committees. 11 CFR 100.5(g)(4)(ii)(D) and*  
12 *110.3(a)(3)(ii)(D).*

13 Neither the Joint Venture nor the GE companies is a labor organization,  
14 membership organization, a cooperative, or a trade association. Thus, this factor does  
15 not apply.

16 *(E) Whether a sponsoring organization or committee has common or*  
17 *overlapping officers or employees with another sponsoring organization*  
18 *or committee which indicates a formal or ongoing relationship between*  
19 *the organizations or committee. 11 CFR 100.5(g)(4)(ii)(E) and*  
20 *110.3(a)(3)(ii)(E).*

21 *and*

22 *(F) Whether a sponsoring organization or committee has any members,*  
23 *officers or employees who were members, officers, or employees of*

1            *another sponsoring organization or committee which indicates a formal or*  
2            *ongoing relationship or the creation of a successor entity. 11 CFR*  
3            *100.5(g)(4)(ii)(F) and 110.3(a)(3)(ii)(F).*

4            The Joint Venture and the GE companies have one official overlapping decision-  
5 maker, namely Mr. Penske. Mr. Penske founded the Joint Venture, serves as chairman of  
6 the general partner, Penske, and sits on the Board of Directors of GE.<sup>7</sup> In addition, there  
7 are two GE members on the Advisory Committee of the Joint Venture, and the CEO of  
8 the Joint Venture holds an “honorific title” with GE Capital Corporation, which the  
9 requestors characterize as “a holdover from when the Joint Venture was majority owned  
10 by GE entities.” Currently, there are no other overlapping officers, directors, or  
11 employees between the Joint Venture and the GE companies. The requestors have  
12 identified no former officers of employees of the GE companies who may work for the  
13 Joint Venture or Penske companies other than what “might be expected in the normal  
14 employment market.” Nor is there any program or agreement for either the Joint Venture  
15 or the Penske companies to hire former GE employees or for GE to hire former Joint  
16 Venture or Penske employees.

17            In past advisory opinions, previously affiliated SSFs were deemed no longer  
18 affiliated despite the fact that there was an overlap in officers in the parent organizations.  
19 In Advisory Opinion 2007-13 (United American Nurses), there was only one official  
20 overlapping decision maker, the Union president, and one unofficial overlapping decision  
21 maker, the Union Vice President. Similarly, in Advisory Opinion 1996-23 (ITT), three

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<sup>7</sup> Mr. Penske also serves as Chairman of the Board and CEO of both Penske Corporation and Penske Automotive Group, Inc.

1 previously affiliated SSFs were deemed no longer affiliated after a corporate  
2 reorganization, despite the fact there was an overlap of three members on one company's  
3 eight-person board of directors, and four members on another company's eleven-person  
4 board. Accordingly, Mr. Penske's dual positions with Penske and as one of 16 members  
5 of GE's Board of Directors are not by themselves a strong indication of affiliation.<sup>8</sup>

6 In addition, the two GE members are in the minority of the five-person Advisory  
7 Committee to the Joint Venture. The Commission has examined joint ventures in which  
8 partners have appointed a minority of members to the governing body of the joint  
9 venture, and has concluded that this factor did not weigh in favor of affiliation. See  
10 Advisory Opinion 1984-36 (American Health Capital) (in a joint venture owned 60-40,  
11 the Commission concluded that the parent of the managing partner corporation that  
12 owned a 40% interest, but appointed only four of the nine members of the joint venture's  
13 board (while the other owner corporation appointed five), was not affiliated with the joint  
14 venture partnership). Thus, this factor does not suggest that the entities are affiliated.

15 *(G) Whether a sponsoring organization or committee provides goods in a significant*  
16 *amount or on an ongoing basis to another sponsoring organization or committee.*  
17 *11 CFR 100.5(g)(4)(ii)(G) and 110.3(a)(3)(ii)(G).*

18 *and*

19  
20 *(H) Whether a sponsoring organization or committee causes or arranges for funds in*  
21 *a significant amount or on an ongoing basis to be provided to another sponsoring*  
22 *organization or committee. 11 CFR 100.5(g)(4)(ii)(H) and 110.3(a)(3)(ii)(H).*

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<sup>8</sup> See <http://www.ge.com/company/leadership/directors.html> (last visited July 9, 2009).

1           The question of whether two companies and their SSFs are affiliated depends on  
2 whether either company established, finances, maintains, or controls the other company  
3 or the other company's SSF. 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g). Hence, the financial  
4 arrangements between the two companies are a particularly important factor. 11 CFR  
5 100.5(g)(4)(ii)(G).

6           Here, the Joint Venture's primary source of funding is a revolving line of credit  
7 held by GE Capital Corporation, an affiliate of the GE companies. This line of credit was  
8 established prior to the execution of the Third Restated Agreement. Through it, the Joint  
9 Venture has received financing from GE Capital Corporation at interest rates and on  
10 other terms and conditions that are the same as or no less favorable to the Joint Venture  
11 than would be provided if the Joint Venture were a wholly owned subsidiary of GE  
12 Capital Corporation.

13           Following the execution of the Third Restated Agreement, the line of credit  
14 remains open. The terms of the contractual agreement establishing the line of credit were  
15 renegotiated when the GE companies became limited partners in the Joint Venture. The  
16 renegotiated agreement gives GE Capital Corporation the right to reset the rates to market  
17 rates and to make the Joint Venture refinance the debt with third-party lenders.  
18 Requestors anticipate that GE Capital Corporation will exercise these rights some time in  
19 the future. However, to date GE Capital Corporation has not exercised those rights.  
20 Moreover, while the current terms of the contractual agreement to the line of credit are  
21 "more akin to agreements with third-party lenders, with affirmative and negative  
22 covenants, events of default, [and] reporting obligations" the fact remains that the  
23 favorable rates on the line of credit have not changed.

1           Although the Commission has concluded in prior advisory opinions that  
2   disaffiliated companies may maintain some customer-supplier relationships, in all of  
3   these situations the provision of funding or goods and services between the companies  
4   was either not in significant amounts or represented arm's-length transactions at  
5   commercially reasonable rates. *See* Advisory Opinions 2000-28 (ASHA) (two  
6   organizations were disaffiliated even though they shared office space when the fair  
7   market rental for the space was paid through an arm's-length transaction; a one-time  
8   secured loan of \$200,000 at 6% from one organization to the other was an arm's-length  
9   transaction), 2003-21 (Lehman Brothers) (Lehman provided investment banking and  
10   financial advisory services to Peabody Energy Corporation at commercially reasonable  
11   transaction rates and on terms that were not any better than those offered by Lehman to  
12   other parties), 2004-41 (CUNA Mutual) (disaffiliation found even though one  
13   organization made a one-time payment of \$50,000 to the other), and 2007-13 (United  
14   American Nurses) (\$900,000 paid by the Union for shared office space and services was  
15   not a significant portion of the Association's receipts (approximately 2.1%), or of the  
16   Union's total disbursements (approximately 6.8%)) (citing Advisory Opinion 1996-42  
17   (Lucent Technologies) (SSFs of two corporations were disaffiliated even though one of  
18   the corporations had agreed to pay the other corporation at least \$3 billion over three  
19   years for goods and services, when that amount represented only a "small percentage" of  
20   the recipient corporation's revenues)).

21           Here, by contrast, the line of credit from GE Capital Corporation (an affiliate of the  
22   GE limited partners) constitutes the Joint Venture's primary source of funding and is

1 provided at rates no less favorable than GE Capital Corporation would provide to a  
2 wholly owned subsidiary.

3 Thus, this factor strongly indicates that the Joint Venture and the GE companies  
4 remain affiliated.

5 *(I) Whether a sponsoring organization or committee had an active or*  
6 *significant role in the formation of another sponsoring organization or*  
7 *committee. 11 CFR 100.5(g)(4)(ii)(I) and 110.3(a)(3)(ii)(I).*

8 The GE companies were not involved in the formation of the Joint Venture, but  
9 affiliates of GE Capital Corporation became involved shortly after its formation in 1988.  
10 The Joint Venture and its employees established Penske PAC in 2002, and administer it  
11 without the involvement of the GE companies or any employees of the GE companies.  
12 Similarly, there is no indication that the Joint Venture was involved in the formation of  
13 GEPAC.<sup>9</sup> Thus, this factor does not suggest that the entities are affiliated.

14 *(J) Whether the sponsoring organizations or committees have similar patterns*  
15 *of contributions or contributors which indicate a formal or ongoing*  
16 *relationship between the sponsoring organizations or committees.*  
17 *11 CFR 100.5(g)(4)(ii)(J) and 110.3(a)(3)(ii)(J).*

18 Penske PAC has not and does not coordinate contributions with GEPAC except to  
19 the extent necessary to comply with the shared contribution limits applicable to affiliated

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<sup>9</sup> GEPAC registered with the Commission effective January 1, 1993. With respect to the SSFs themselves, each operates independently, and each serves different interests, with the Joint Venture focused on the provision of transportation services and logistics, while GE is a “conglomerate engaged in many lines of business.” The Senior Vice President and General Counsel of the Joint Venture serves as Treasurer of Penske PAC. Other employees of the Joint Venture assist in the administration of Penske PAC through an SSF steering committee.

1 committees. There have been no transfers between the two SSFs, and the Joint Venture  
2 knows of no overlap between contributors to the two SSFs. Thus, this factor does not  
3 indicate that the entities are affiliated.

4 *d. Conclusion*

5 The above analysis of the affiliation factors demonstrates that the Joint Venture  
6 and the GE companies have taken significant steps to becoming disaffiliated, but  
7 nonetheless remain, at present, affiliated. While the GE companies now have a minority  
8 ownership interest in the Joint Venture, that minority interest is extremely large (49.90%  
9 as compared to 50.10%). Similarly, while the GE companies have the right to appoint a  
10 minority of members to the Joint Venture's governing body, the Advisory Committee,  
11 that minority is also large (two members as compared to three members). In addition, the  
12 GE companies have supermajority voting rights in certain key decisions regarding the  
13 Joint Venture, with some instances of unanimous approval of all the partners required for  
14 the Joint Venture to take action. Moreover, the individual who founded the Joint Venture  
15 and serves as chairman of the general partner also sits on the Board of Directors of GE.  
16 While none of these factors, by itself, necessarily indicates that the GE companies and the  
17 Joint Venture are affiliated, when combined with the facts that GE Capital Corporation  
18 (an affiliate of the GE companies) continues to serve as the Joint Venture's primary  
19 source of funding, and that the funds continue to be provided at "rates no less favorable  
20 . . . than would be provided if the Joint Venture were a wholly owned subsidiary" of GE  
21 Capital Corporation, they lead the Commission to conclude that, at present, the Joint  
22 Venture and the GE companies remain affiliated. Consequently, Penske PAC and  
23 GEPAC are also affiliated for purposes of the Act.

